

Appl. No. 10/052,967
Atty. Docket No. G-270ML (CP-1229)
Amdt. dated 01/16/2004
Reply to Office Action of 10/16/2003
Customer No. 27752

REMARKS

Application Amendments

Claims 1-6 are pending in the present application. No additional claims fee is believed to be due.

Claims 7-24 have been withdrawn as a result of an earlier restriction requirement, and may be canceled upon notice of allowable subject matter.

Claim 6 has been amended to depend from claim 2. Support for this amendment can be found at page 4, lines 18-19 of the specification.

No other claim amendments have been made.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 USC 102(b) Over US Patent No. 4,958,026 to Schoelkopf et al.

Claims 1, 2, and 6 are rejected under 35 USC 102(b) as being anticipated by US Patent No. 4,958,026 to Schoelkopf et al. ("Schoelkopf"). The Examiner states that Schoelkopf discloses substituted phenylethylamine compounds as depicted in Formula (II), column 6 of Schoelkopf, in which one of R10 and R11 is benzyloxy and the other is amino, wherein the benzyloxy group is converted to hydroxyl and wherein R1 and R2 may be hydrogen or alkyl of 1-5 carbons. Thus, the Examiner asserts, Applicants' claimed compounds are anticipated. Applicants respectfully traverse the present rejection based on the following comments.

Applicants' compounds require, according to the formula in present claim 1, an aminomethyl group at the 5-position of the 2-aminophenol moiety. Applicants' claimed 2-amino-5-aminomethyl-phenol derivative compounds are suitable primary intermediates for hair coloring compositions, providing good oxidative coloration of hair in a wide variety of color shades with fastness to light and shampooing. In contrast, Formula (II) of Schoelkopf depicts substituted phenylethylamine compounds. Thus, Schoelkopf discloses compounds which differ in chemical structure from Applicants' claimed compounds in that the compounds of Schoelkopf require an additional -CH₂- between the substituted phenyl group and the nitrogen of the amino group. Each and every element of Applicants' claim 1, from which present claims 2 and 6 depend, is not disclosed in Schoelkopf. Therefore, the present invention is novel over Schoelkopf.

Rejection Under 35 USC 103(a) Over US Patent No. 4,958,026 to Schoelkopf et al.

Claims 1, 2, and 6 are rejected under 35 USC 103(a) as being unpatentable over US Patent No. 4,958,026 to Schoelkopf et al. ("Schoelkopf"). As recited above, the Examiner states

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that Schoelkopf discloses substituted phenylethylamine compounds of Formula (II) of Schoelkopf, in which one of R10 and R11 is benzyloxy and the other is amino, wherein the benzyloxy group is converted to hydroxyl and wherein R1 and R2 may be hydrogen or alkyl of 1-5 carbons. The Examiner further refers to Example 1 of Schoelkopf, wherein the dihydrochloride salt of N-[2-(3-amino-4-hydroxyphenyl)ethyl]-N,N-dipropylamine is prepared. Therefore, the Examiner asserts, it would be obvious to one of ordinary skill in the art to make Applicants' claimed compounds. Applicants respectfully traverse the present rejection based on the following comments.

Schoelkopf does not teach or suggest all of Applicants' claim limitations and, therefore, does not establish a *prima facie* case of obviousness (MPEP 2143.03). As described above, Applicants' compounds require, according to the formula in present claim 1, an aminomethyl group at the 5-position of the 2-aminophenol moiety. In contrast, Schoelkopf discloses substituted phenylethylamine compounds which differ in chemical structure from Applicants' claimed compounds in that the compounds of Schoelkopf require an additional -CH₂- between the substituted phenyl group and the nitrogen of the amino group. Thus, Schoelkopf fails to establish a *prima facie* case of obviousness.

Alternatively, there is no suggestion or motivation for one of ordinary skill in the art to modify Schoelkopf to achieve Applicants' claimed compounds. Schoelkopf is directed to dopamine derivatives of the described general formula and their use as medicinal agents having anti-hypertensive activity. While Schoelkopf discloses substituted phenylethylamine compounds as synthetic intermediates and the preparation of amine compounds as salts, Schoelkopf fails to contemplate oxidative dye compounds. Applicants' claimed 2-amino-5-aminomethyl-phenol derivative compounds are suitable primary intermediates for hair coloring compositions, providing good oxidative coloration of hair in a wide variety of color shades with fastness to light and shampooing. One of ordinary skill in the art would not be motivated to modify compounds used as anti-hypertensives in order to develop new oxidative dye primary intermediates. Moreover, the art of primary dye intermediates for oxidative dyeing of keratinous fibers is highly unpredictable. Compounds which are structurally similar often deliver much different dyeing profiles. Accordingly, with respect to oxidative dye design and development, structural similarity alone does not necessarily lead to similar results. Further, Schoelkopf characterizes the compounds disclosed therein as dopamine derivatives. Dopamine has -CH₂CH₂- (*i.e.*, ethylene) between a substituted phenyl group and an amino group, just as the compounds of Formula (II) of Schoelkopf require. Consequently, Schoelkopf would appear to teach away from compounds which have only -CH₂- (*i.e.*, methylene) between a substituted phenyl group and an amino

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group. Therefore, it would not have been obvious to one of ordinary skill in the art to modify the compounds of Schoelkopf to achieve Applicants' presently claimed compounds.

Accordingly, Applicants' claims 1, 2, and 6 are novel and unobvious over Schoelkopf.

CONCLUSION

In light of the amendments and remarks presented herein, it is requested that the Examiner reconsider and withdraw the present rejections. Early and favorable action in the case is respectfully requested.

Applicants have made an earnest effort to place their application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, Applicants respectfully request reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-6.

Respectfully submitted,

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